

# Advisory Opinion

IECDB AO 2008-05

May 5, 2008

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on purchasing items by a federal or out-of-state PAC and the requirement to file a verified statement of registration. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

Iowa Code section 68A.201(5) and Board rule 351—4.32 require a federal or out-of-state PAC, that meets certain criteria, to file a verified statement of registration (VSR) with the Board for each contribution in excess of \$50 made to Iowa state committees. The issue has been raised concerning whether a federal or out-of-state PAC that purchases items from an Iowa state committee is required to file a VSR with the Board.

The problem in this area has been that federal law does not require separate reporting of the purchase of items. Rather, the federal committee is able to disclose on a separate schedule of its report that it received money for the sale of committee items. Thus, federal PACs that have been purchasing items from Iowa state committees have not been filing VSRs as there has been confusion between federal and state law.

As a consequence, the Board's staff has been requiring the filing of a VSR, imposing civil penalties for the late-filing of the form, and receiving requests for waiver based on the confusion as outlined above, all of which takes up the time and resources of the Board to resolve.

We are of the opinion that when a federal or out-of-state PAC purchases an item for fair market value from an Iowa state committee, no VSR is required to be filed. However, the Iowa state committee shall correctly disclose on Schedule A of its campaign disclosure report or otherwise notify the Board in writing that the money coming in to the Iowa state committee is for the purchase of an item.

If the purchase of the item is in excess of the fair market value, then a VSR would be required as the excess amount has become a "contribution" to the Iowa state

committee. The VSR would be to disclose the transaction involving the amount that was in excess of the fair market value of the underlying purchased item.

In closing, the Board would like to remind all federal and out-of-state PACs that a VSR is required to be filed within 15 days of making a contribution in excess of \$50 to an Iowa state committee. Pursuant to Board rule 351—4.32(5) “date of contribution” means the “day, month, and year the contribution check is dated.” In addition, that it is now possible to file a VSR electronically using the Board’s Web site at <https://webapp.iecdb.iowa.gov/>.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

Betsy Roe

John Walsh

Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel